James E. Horton
204 4th Street, Suite A
Woodland, CA 95695
Email address: jaakovos@gmail.com
In Pro Per

SUPERIOR COURT OF CALIFORNIA
COUNTY OF YOLO

	) Dept. 10
PEOPLE OF THE STATE	) Case No.: 15006705
	) COMMON LAW MOTION TO DISMISS
CALIFORNIA,	) BECAUSE OF DENIAL OF RIGHT TO
	) SPEEDY TRIAL, DUE PROCESS AND
Plaintiff,	) FAIR TRIAL
	)
vs.	)
	)
James E. Horton,	)
	)
Defendant	)
	)
	)

TO THE ABOVE ENTITLED COURT, AND TO THE DISTRICT ATTORNEY OF YOLO COUNTY, STATE OF CALIFORNIA:

PLEASE TAKE NOTICE that on _____, in Department ____ at _____, or as soon thereafter as the matter may be heard, the defendant, James E. Horton, will move the Court to dismiss the accusatory pleading filed herein on the grounds that the prosecution has unreasonably delayed, violating the defendant's rights to a Speedy Trial and Due process for a Fair Trial guaranteed by the Fifth Sixth and Fourteenth Amendments to the United States Constitution and Article I, section 15 of the California Constitution. The delay in bad-faith was more than nine and one half months from arrest on 02182015. This motion will be based on the attached memorandum of points and authorities, attached declaration, evidence taken at the hearing on this motion, argument at that hearing.

Date:_____ Respectfully submitted,

_____
James E. Horton, In Persona Propria

MEMORANDUM

SUMMARY OF ARGUMENT

Actual Prejudice to Defendant's Fundamental Rights to Right to a Speedy Trial and Fair Trial has been caused by procedural incompetence and procrastination by public officials (which betray Prosecutorial Harassment) causing over nine and one half month of bad-faith delay Pre-Arraignment subsequent to Arrest.

RULE OF LAW

Postaccusation delay is covered by article I, section 15 of the California Constitution: "[I]n criminal prosecutions, in any event whatever, the party accused shall have the right to a speedy and public trial…" (See also Penal Code section 686.) The California provision for a speedy trial "'reflects the letter and spirit of' the Sixth Amendment to the United Sates Constitution…" (People v Wilson (1963) 60 C2d 139, 144 n2, 32 CR 44.)

The right to a speedy trial is a "fundamental right granted to the accused and… the policy of the law since the time of the promulgation of the Magna Carta and the Habeas Corpus Act." (Harris v Municipal Court (1930) 209 c 55, 60, 285 P 699.) In an effort to implement this constitutional right, the California legislature has enacted a number of specific provisions providing certain time limits. However, the constitutional guarantees are self-executing, and specific legislation is not necessary to bring into effect the rights guaranteed thereunder. (Harris v Municipal Court (1930) 209 C 55, 60, 285 P 699.) Consequently, it remains for the courts to determine whether a defendant's constitutional rights have been impinged, even though no specific statute may have been violated. (Jones v Superior Court (1970) 3 C3d 734, 91 CR 578; Barker v Municipal Court (1966) 64 C2d 806, 51 CR 921; Rost v Municipal Court (1960) 184 CA2d 507, 7 CR 869.)

The prosecution has a duty to employ all reasonable means to bring an accused promptly to trial. (Rice v Superior Court (1975) 49 CA3d 200; Plezbert v Superior Court (1971) 22 CA3d 169; Jones v Superior (1970) 3 C3d 734).

ANALYSIS

DEFENDANT PREJUDICED BY PROCRASTINATION OF PUBLIC OFFICIALS

Defendant was arrested on 02182015 upon a false report by an informant alleging violation of PC § 415; he was approximately one block away from location of alleged incident at time of arrest – he had recently left within minutes prior. Upon arrest, a date of appearance was set for 05182016. Defendant arrived on that date to appear and was notified that the docket was empty. (As counsel for other cases, a Public Defender advised this meant charge was definitely "thrown out.")

Later he was informed of a rejection letter dated 05062015 that "the agreement to appear, issued to you… February 18, 2015 is not being pursued by the District Attorney's Office." The case was rejected. (The District Attorney's office addressed letter in its address block to: "Transient, Woodland,

CA 95695. Defendant did not receive it until promptly after the inexpectant second initiation of the charge upon same incident as described below.)

On 12042015, without notice (as an unforeseen Act of the Court), charges in this case were brought during a Pretrial Conference for three other cases pending. Conspicuously, this act coincided with the setting of jury trials for prior pending cases on 120042015. During prior pendencies, Defendant was continually informed by Court and public defender that cases were "attached to" and "trailing" another pending case (Case #: 13-0003628) as a procedural anomaly. Suddenly, during pretrial conference on date 08032015 for 13-0003628, suddenly, a jury trial was first set for 10142015 corresponding with the setting of jury trial for other cases as another procedural anomaly effecting Fair Trial. (Please refer to Motions to Dismiss Because of Denial of Speedy Trial Rights in prior cases numbered 14-4497 and 14-1219.) Defendant was arraigned on 12072015.

Now, due to substantial conflict, Defendant is self-representing in a total of three pending cases simultaneously during pendencies. Therefore, The timing of said act becries Malicious Abuse of Legal Process. Furthermore, at pretrial conferences and other hearings for Defendant's other pending cases, matters were heard about first case with hearing dates running concurrently and to be conducted simultaneously. They were all abrupt. As the record will show, minimal time was allowed for process on matters even in former case; discussions for matters in other cases, during there pendency, were effectively estopped hence precluded. Defendant is unduly harassed by these compounded procedural anomalies.

In present case, prosecution delayed setting an arraignment for over nine and one half months since his arrest. Therefore, absent any showing of cause at all, public officials caused approximately nine and one half months of bad faith delay for bringing to trial. This constitutes actual prejudice to Defendant's fundamental right to Speedy Trial. Delay, without showing of good cause, was not a delay between arraignment and trial date, but between the arrest and the second arraignment date, when first arraignment was canceled as case was rejected by the District Attorney. Delay, being subsequent to Arrest but prior to Arraignment constitutes Abuse of Legal Process when all factors arising to Actual Prejudice are weighed. According to *Serna,* "Prearrest delay may give rise to due process claim but only delay following formal accusation or delay subsequent to arrest are considered in evaluating claim under Sixth Amendment… speedy trial clause…" (*Serna v. Superior Court* (1985) 40 cal.3d 239). This court further held, speedy trial right "attaches with the filing of the accusatory pleadings and arrest, <u>whichever is first"</u> (*Serna,* Supra). Here, Defendant has already been arrested prior to the filing of a Complaint. The right attached with his arrest.

Furthermore, the delay in bad faith of nine and one half months in the instant case is longer than delays found unreasonable in prior cases. For example, In *Kehler v Municipal Court*, a delay of two months caused by a Municipal Court was cause for reversal with an order of dismissal by a Court of Appeals.

In this case, a complaint was filed on 08031951 in Municipal Court against petitioner, Kehler, for seven counts of misdemeanors in the operation of a vehicle. On 08091951, he was arraigned pleading not guilty. Subsequently, Keheler ws granted continuances twice until 03201952.On this date, although defense counsel (with Kehler absent) requested a trial, the court refused on grounds that the defendant was not present. Counsel then moved for dismissal. On 03271952, his motion was denied; the court set a trial date for 05161952. Although counsel objected to such a late date, the court reasoned that date was

the earliest possible calendar date for trial."On April 8, 1952, Kehlor filed his petition for writ of mandate in the Superior Court of Stanislaus County praying for an order of that court directing… to dismiss" the criminal complaint contending that "… because of the failure of the court to proceed on March 20 with the resetting of his trial for May 16, he was thereby deprived of a 'speedy trial' as that phrase is used in Section 13, Article I of the Constitution of this state." Superior Court denied Kehler's petition on grounds that Defendant's absence on 03201952 was not explained by counsel, the Court has lawful right to refuse to proceed without the presence of defendant, and, therefore, PC § 1382 "is not mandatory in these circumstances." Petitioner then petitioned for writ of mandate to the District Court of Appeal, Third District. The Court of Appeals reasoned that lower court's denial of Kehler's petition misinterpreted § 1382 which defines: "defendant in a misdemeanor case in inferior court" is to be brought trial within 30 days after he is arrested "… unless by his own neglect or failure to appear in court when his presence lawfully required…" Furthermore, Defendant knowingly absented himself as rightful pursuant to § 1043 and according to portions, the presence of a defendant is only absolutely mandatory in felony cases. Petitioner claimed denial of Right to Speedy Trial because of bad-faith delay between the dates of 03201952 and 05161952 – a delay accruing two months. Judgement was reversed; lower court was directed to order a dismissal of the criminal complaint.

Therefore, it would be in the interest of justice for the Court to dismiss the charge on grounds that Denial of Right to Speedy Trial is presumed to prejudice Defendant by procrastination of public officials.

DEFENDANT'S RIGHT TO FAIR TRIAL PREJUDICED BY PROTRACTED RESTRAINT OF HIS LIBERTY TO AN AREA

Proceeding on this action would not serve justice, but only prejudice the Defendant in that the delays are causing undue disruption to his life without justifiable cause. At time of arrest, Defendant did not have outstanding warrants, nor a criminal record. Indigent Defendant is not resident to the area. He intends to move on and tend to important life matters, yet his liberty to move is restrained by inordinate bad faith delay – and without income – in proceedings pending for total of over two years in this Court.

Procrastination by public officials in this matter is overbearing upon the Defendant a type of Prosecutorial Harassment that is Bordering on Arrest by unjustly depriving Defendant of liberty and, also, life in that his opportunities for employment are disrupted; associations (such as Church affiliations) are severed and impaired unto ruination (with isolation – deepseated ostracization) by protracted, punitive, procedural siege in a foreign region. Concurrently, impoverished without domicile, Defendant must expend time-consuming effort toward life-sustaining activities while balancing deliberative, exhaustive labor of Criminal Defense (once again – without income). Having, by necessity, to self-represent in such circumstances is depleting his resources; imposing impediments to conducive working conditions thus retarding his ability to prepare for trial as a Fair Trial issue. Thereby, Defendant is furthermore prejudiced by the drawnout procedural harassment, as above, by inducement of anxiety and infliction of distress of a nature which a reasonable person would expect to be produced circumstantially as a human norm.

Furthermore, Defendant is forced by necessity to self-represent due to severely substantial conflict with counsel being in an unfair conflict with agents of the state. The pivotal case on the federal question concerning definition of standards for determining competence to self-represent, *Indiana v.*

Edwards, spawned contributory research and analysis at issue for application in the states which considered such an issue. In *The Journal of the American Academy of Psychiatry and the Law,"* Psychiatrists Morris and Frierson published a clinical study on choice to exercise Right to Self-Represent as a phenomena with analysis toward "professional guidelines related to forensic psychiatric practice" and "limitations of the decision…" to apply under *Edwards.* The Defendant found article annotated in some secondary authority for research under the topic of Competence to Self-represent confronted with in Case numbered 13-0003626 and for his *Faretta* motion.

Amongst positive reasons for such choice, vindicated by these researchers, include, "… little trust in the fairness of the legal system" when it is reasonable (and significantly common) to believe that Fiduciary Interests of "public defenders" are sometimes compromised since "they are employees of the state" (Douglas m. Morris, MD, and Richard L. Frierson, MD, *Pro Se Competence in the Aftermath of Indiana v. Edwards*, 36 J Am Acad Psychiatry 551-557 (2008)). Obviously, such realizations would constitute awareness of an unfair conflict between a Defendant and Agents of the State necessitating self-representation for any adequate defense. Defendant, and rationally by his experience, asserts that facts demonstrate such a condition exists in this case pending (as well as others pending simultaneously).

Meanwhile, during the aforementioned administrative restraint affected throughout of Case numbered 13—003628, a total accumulation of four criminal matters have overbearingly initiated by the Yolo County District Attorney's Office. He now needs to self-represent (and in these Extraordinary Circumstances) in all four cases simultaneously. According to *Serna,* "Right to speedy trial protects criminal defendant against oppressive pretrial incarceration, anxiety, concern and disruption of his everyday life" (*Serna v Superior Court* (1985) 40 C3d 239). Meanwhile, during the aforementioned administrative restraint affected throughout of Case numbered 13—003628, a total accumulation of four criminal matters have overbearingly initiated by the Yolo County District Attorney's Office. He now needs to self-represent (and in these Extraordinary Circumstances) in three of these cases simultaneously. According to *Serna,* "Right to speedy trial protects criminal defendant against oppressive pretrial incarceration, anxiety, concern and disruption of his everyday life" (Serna v Superior Court (1985) 40 C3d 239). Furthermore, this Court reasoned, quoting from *U.S. v Marion*:

> "Inordinate delay between arrest, indictment and trial may impair a defendant's ability to present an effective defense. But the major evils protected against by the speedy trial guarantee exists quite apart from actual or possible prejudice to an accused's defense. To legally arrest and detain, the Government must assert probable cause to believe the arrestee has committed a crime. Arrest is a public act that may seriously interfere with a Defendant's liberty, whether he is frre on bail or not, and that may disrupt his employment, drain his financial resources, curtail his associations, subject him to (reputation harm), and creat anxiety in him, his family and friends…" (*U.S. v Marion* (1971) 404 US 307 as quoted in *Serna v Superior Court* (1985) 40 C3d 239).

PLEASE NOTE, Especially when Defendant lacked criminal record prior to series frivolous incriminations, Defendant asserts: Due respect for his Due Process Right for Innocence until Proof of Guilt demands just consideration of rational claims as presented during prior case above mentioned as Case numbered 13-0003628 – namely that facts surrounding cases evidence that charges result out of (and with a motive for) Retaliatory Malicious Overzealous Prosecution and are based on false arrests

and/or frivolous, selective grounds. Here -- severe Abuse of Legal Process exists. Therefore, it would be in the interest of justice for the Court to dismiss the charge.

Whereas scheduling for Defendant's jury trial, with excessively prejudicial, procedural inefficiency, was delayed from 021821015 until 02162016; and, whereas arraignment was delayed until 12072015 hereunto; effectively, Defendant's right to Due Process and Speedy Trial under both the Constitutions of the United States of America and of California respectively since Defendant was prejudiced by the lengthy, cumulative delays. Therefore, Defendant respectfully motions this Court to dismiss the accusatory pleading.

Date:_____ _____

James E. Horton, In Propria Persona